

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

WRIT PETITION No.25078 OF 2005

ORDER:

This writ petition is filed seeking a Writ of Mandamus declaring the action of the respondents in not considering the case of the petitioner for absorption pursuant to H.O.Circular No.Per:14/98-99, dated 08.06.1998 issued by the 1st respondent as illegal and arbitrary.

Heard the learned counsel appearing for the petitioner and the learned Counsel appearing for the respondents.

The brief facts of the case are as under:

The petitioner was appointed as Peon-cum-Farash in the State Bank of Sourashtra, Sripuram Colony Branch, Malakpet, Hyderabad on consolidated wages and he worked as such in different spells from 03.08.1996 to 29.11.1996 for more than 240 days and as on the date of filling of the writ petition, he was being paid Rs.2,400/- per month. While so, the 1st respondent issued notification dated 08.06.1998 for absorption of temporary subordinate staff employees as permanent staff who have put in a temporary service of 90/240/270 days or more after 01.11.1991. As the petitioner has completed 240 days of work, the 4th respondent vide letters dated 21.07.1999, 10.11.1999, 30.12.1999, 28.01.2000, 23.12.2000, 12.02.2001, 28.07.2001 and 28.12.2001 recommended the case of the petitioner to the 3rd respondent for absorption. The 3rd respondent directed the 4th respondent vide letter dated 18.07.2001 to submit the details of the sanctioned strength and actual subordinate staff, for which the 4th respondent sent details. The grievance of the petitioner is that though he is entitled for regular absorption as sub-staff, the respondents did not consider his case.

The respondents filed detailed counter denying the contentions of the petitioner. The respondents admitted that the petitioner belongs to B.C-A community, but denied the appointment of the petitioner on consolidated wages. It is stated that due to exigency of work, the petitioner might have been engaged on temporary basis, but it will not confer any right to claim absorption. It is further contended that the State Bank of Sourashtra has been merged into State Bank of India and the State Bank of India after 31.03.1997 has no scheme for absorption of any employee, except the recruitment under due process. The alleged notification dated 08.06.1998 said to have been issued by the State Bank of Sourashtra is misconceived. In fact, the said instructions speak of only granting a chance for appearing at the interview for appointment against part time vacancies as likely to arise up to June, 1999. However, the said instructions could not be pursued further owing to denial of permission for recruitment by the Government of India. It is denied that the petitioner has completed 240 days of work. It is contended that the petitioner claiming as temporary worker cannot maintain this writ petition and he has to approach before the appropriate Forum available under the Industrial Disputes Act.

The admitted case is that the writ petitioner worked for more than 100 days in the year 1996 with the State Bank of Sourashtra, Sripuram Colony Branch as a temporary daily wage Peon-cum-Farash and said to be still continuing. In the said Branch, the vacancy of Peon-cum-Farash arose since the part-time Peon-cum-Farash by name Sarala has been appointed as full time peon. Another sub-staff by name Omprakash was relieved for reporting at Visakhapatnam. Therefore, in between 03-08-1996 to 29-11-1996, i.e., for about four months, the writ petitioner was appointed by different orders and worked as such for 100 days on a weekly wages of Rs.350/-.

On 27-06-1998, the State Bank of Sourashtra has called for the applications from temporary sub-staff employees who worked for about 90/240/270 days or more after 01-01-1991 but before 31-07-1997.

Since satisfied the said requirement, he applied for the said temporary appointment but he was not appointed. The Branch where he was working has certified his services and also recommended to the authorities concerned to appoint the petitioner as a part-time employee in the branch since there was no one to attend to the duties of Peon-cum-Farash. The original respondents did not consider the application of the petitioner and hence he filed the writ petition with a prayer that the action of the original respondents in not considering the case of the writ petitioner for absorption be declared as illegal, arbitrary and consequently direct that the petitioner be absorbed as a regular sub-staff.

During the year 2008, by notification dated 13-08-2008, the State Bank of Sourashtra was acquired by the State Bank of India by taking over the said bank as per the notification. Therefore, respondents No.5 to 8 have been impleaded in the writ petition.

The contention of the respondents/transferee bank is that the writ petitioner is not entitled to the relief since no notification as such was issued for filling up the posts and merely because the applications from the candidates eligible to be appointed as part-time Peon-cum-Farash was issued, that will not confer any right upon the writ petitioner to seek his absorption or appointment as a regular part-time Peon-cum-Farash. The other objection is that the question as to whether the writ petitioner has worked for the specified number of days and whether his engagement as a daily wage Peon-cum-Farash was regularly made are the questions of fact, which cannot be adjudicated in the writ petition. The remedy if any of the writ petitioner is to invoke the forums under the Industrial Disputes Act but he cannot seek Writ of Mandamus directing the transferee bank to absorb the writ petitioner as a regular Peon-cum-Farash.

The material that is produced shows that the writ petitioner was appointed in four spells prior to the cut off date namely 31-07-1997. The writ petitioner produced four of his appointment orders issued by

the transferred bank/State Bank of Sourashtra dated 03-08-1996, 01-09-1996, 01-10-1996 and 31-10-1996. Under these four orders, the writ petitioner was appointed for a period of 22 days from 03-08-1996 to 24-08-1996; 29 days from 01-09-1996 to 29-09-1996; 20 days from 01-10-1996 to 20-10-1996; and 29 days from 01-11-1996 to 29-11-1996. In all the four appointment orders, the writ petitioner was informed that his appointment is purely a temporary one for the number of days mentioned therein in the vacancy of one Omprakash and will be discontinued on expiry of the period mentioned therein or return to duty by the said Omprakash, whichever is earlier. The appointment orders also stipulate that the said temporary appointment will not confer any right whatsoever to claim absorption in the bank's permanent establishment in any category. From the above four appointment orders, it is manifest that the writ petitioner was appointed only for a specified number of days in a temporary vacancy of one Omprakash.

It is also placed on record that the Branch in which the writ petitioner was working has recommended the candidature of the writ petitioner and also informed the authorities that there is a pressing need to appoint a part-time Peon-cum-Farash since Sarala who was working as such was promoted as full-time peon and Omprakash has been relieved for reporting at Visakhapatnam.

From the above facts borne out from the record, what is required to be seen is as to whether the writ petitioner can claim as of right that he is entitled to be appointed or absorbed as a part-time Peon-cum-Farash on regular basis.

The contention of the learned Counsel appearing for the petitioner is that the writ petitioner joined the transferred bank at the age of 20 years as a daily wage Peon-cum-Farash and has been rendering services satisfactorily till date and therefore since he has satisfied the requirement of having worked for the specified number of days prior to the cut off date namely 31-07-1997, he is entitled to be

appointed as a regular employee in the bank.

The contention of the State Bank of India namely the transferee bank is that the writ petitioner having been appointed as daily wage employee cannot claim himself to be entitled to be absorbed merely because he has worked for a specified number of days prior to the cut off date. The appointments or absorption in the bank services has to be approved by the Government and since no such approval was accorded, the bank could not take up the absorption or appointment of any sub-staff in the banks. Merely because the petitioner has worked for interminant spells during 03-08-1996 to 21-11-1996, he cannot seek the direction of absorption in the bank services.

In support of the above contentions, learned Counsel relied upon the following authorities:-

In ***State of Karnataka v. M.L.Kesari***^[1] the Hon'ble Supreme Court at paras-5, 6 and 7 held as under:

“5. The decision in State of Karnataka v. Umadevi was rendered on 10.4.2006 (reported in 2006 (4) SCC 1). In that case, a Constitution Bench of this Court held that appointments made without following the due process or the rules relating to appointment did not confer any right on the appointees and courts cannot direct their absorption, regularization or re-engagement nor make their service permanent, and the High Court in exercise of jurisdiction under Article [226](#) of the Constitution should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment had been done in a regular manner, in terms of the constitutional scheme; and that the courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities, nor lend themselves to be instruments to facilitate the bypassing of the constitutional and statutory mandates.

6. This Court further held that a temporary, contractual, casual or a daily-wage employee does not have a legal right to be made permanent unless he had been appointed in terms of the relevant rules or in adherence of Articles [14](#) and [16](#) of the Constitution. This Court however

made one exception to the above position and the same is extracted below:

“53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa: 1967 (1) SCR 128; R.N. Nanjundappa: 1972 (1) SCC 409 and B.N. Nagarajan: 1979 (4) SCC 507 and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date....

7. It is evident from the above that there is an exception to the general principles against 'regularization' enunciated in Umadevi, if the following conditions are fulfilled:

- (i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.
- (ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed

do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular.

In ***Union of India v. Vartak Labour Union***^[2] the Hon'ble Supreme Court at paras-13 and 15 held as under:

“13. We are of the opinion that there is force in the contentions urged on behalf of the Appellants and these must prevail. We are convinced that the Division Bench has erroneously construed the Office memo dated 2nd February, 2001 as an approved scheme for absorption and regularization of the casual workers. It is manifest from a bare reading of the said memo that it was merely in the nature of an inter-department communication between the Border Roads Development Board headquarters and its officials.

15. It is trite that inter-departmental communications and notings in departmental files do not have the sanction of law, creating a legally enforceable right. In ***Sethi Auto Service Station and Anr. v. Delhi Development Authority and Ors.*** (2009) 1 SCC 180, a Division Bench of this Court, in which one of us (D.K. Jain, J.) was a member has observed thus:

Needless to add that internal notings are not meant for outside exposure. Notings in the file culminate into an executable order, affecting the rights of the parties, only when it reaches the final decision-making authority in the department, gets his approval and the final order is communicated to the person concerned.

17. We are of the opinion that the Respondent Union's claim for regularization of its members merely because they have been working for BRO for a considerable period of time cannot be granted in light of several decisions of this Court, wherein it has been consistently held that casual employment terminates when the same is discontinued, and merely because a temporary or casual worker has been engaged beyond the period of his employment, he would not be entitled to be absorbed in regular service or made

permanent, if the original appointment was not in terms of the process envisaged by the relevant rules. (See: **Secretary, State of Karnataka and Ors. v. Umadevi (3) and Ors.** (2006) 4 SCC 1; **Official Liquidator v. Dayanand and Ors.**(2008) 10 SCC 1; **State of Karnataka and Ors. v. Ganapathi Chaya Nayak and Ors.** (2010) 3 SCC 115; **Union of India and Anr. v. Kartick Chandra Mondal and Anr.**; **Satya Prakash and Ors. v. State of Bihar and Ors.** (2010) 4 SCC 179 and **Rameshwar Dayal v. Indian Railway Construction Company Limited and Ors.** (2010) 11 SCC 733.

In **Official Liquidator v. Dayanand and ors.**^[3] While explaining the dictum laid down in **Umadevi(3)'s case**, a three-Judge Bench of the Hon'ble Supreme Court has observed as under:

“In **State of Karnataka v. Umadevi** (3) {re[prted om (2006) 4 SCC 1}, the Constitution Bench again considered the question whether the State can frame scheme for regularisation of the services of ad hoc/temporary/daily wager appointed in violation of the doctrine of equality or the one appointed with a clear stipulation that such appointment will not confer any right on the appointee to seek regularisation or absorption in the regular cadre and whether the Court can issue mandamus for regularisation or absorption of such appointee and answered the same in negative.”

In **Nand Kumar v. State of Bihar**^[4] the Hon'ble Supreme Court at paras 20, 25 and 26 held as under:

“20. Therefore, considering the facts of the present case, it appears to us that the Appellants were never appointed through a proper procedure. It is not in dispute that they all served as daily wagers. Therefore, it was within their knowledge all the consequences of appointment being temporary, they cannot have even a right to invoke the theory of legitimate expectation for being confirmed in the post. Accordingly, we cannot accept the contention of the Appellants in the matter.

25. We have consciously noted the aforesaid decisions of this Court. The principle as has been laid down

in *Umadevi* (supra) has also been applied in relation to the persons who were working on daily wages. According to us, the daily wagers are not appointees in the strict sense of the term 'appointment'. They do not hold a post. The scheme of alternative appointment framed for regular employees of abolished organisation cannot, therefore, confer a similar entitlement on the daily wagers of abolished organisation to such alternative employment. [See *Avas Vikas Sansthan v. Avas Vikas Sansthan Engineers Association* 2006 (4) SCC 132)]. Their relevance in the context of appointment arose by reason of the concept of regularisation as a source of appointment. After *Umadevi*(supra), their position continued to be that of daily wagers. Appointment on daily wage basis is not an appointment to a post according to the rules. Usually, the projects in which the daily wagers were engaged, having come to an end, their appointment is necessarily terminated for want of work. Therefore, the status and rights of daily wagers of a Government concern are not equivalent to that of a Government servant and his claim to permanency has to be adjudged differently.

26. In these circumstances, in our considered opinion, the regularisation/absorption is not a matter of course. It would depend upon the facts of the case following the rules and Regulations and cannot be de hors the rules for such regularisation/absorption.”

In ***ONGC Ltd. v. Petroleum Coal Labour Union***^[5] the Hon’ble Supreme Court at paras-11 and 44 held as under:

“11. The learned single Judge on appreciation of the facts, circumstances and the legal contentions urged on behalf of both the parties held that the dispute between the parties regarding non-regularisation of the concerned workmen falls within the scope of industrial dispute as defined Under Section 2(k) of the Act. It is further held that the concerned workmen are all victims of unfair labour practice having been employed by the Corporation for several years on temporary basis and even though they were not appointed by following the procedure laid down by the Corporation for recruitment to such posts, they were entitled for regularisation and that their appointment cannot be stated to be illegal. With the above findings, the writ

petition was dismissed on merits by the learned single Judge of the High Court by its judgment and order dated 04.01.2011.

44. In light of the above said discussion and legal principles laid down by this Court in the cases referred to supra, we are of the considered view that the procedure of appointments adopted by the Corporation with respect to the concerned workmen initially appointed through contractors, subsequently through the Co-operative Society, and then vide memorandum of appointment issued to each one of the concerned workmen in the year 1988 and thereafter, continuing them in their services in the posts by the Corporation without following any procedure as contended by the learned senior Counsel on behalf of the Corporation whose contention is untenable in law and their appointment can be said as irregular appointments but not as illegal as the same was not objected to by any other Authority of the Corporation at any point of time. But their appointment in their posts and continuing them in their services is definitely cannot be termed as illegal, at best it can be called irregular. Therefore, the Certified Standing Orders of the Corporation by all means apply to the workmen concerned.”

From the perusal of the authorities cited above, more particularly, the Judgment of the Constitutional Bench in **Umadevi's case**, I have no hesitation in holding that the writ petitioner cannot be treated as an employee appointed on a daily wage or contract basis irregularly so as to direct the authorities to consider his absorption as a regular employee. No selection process was taken up at the initial appointment of the writ petitioner as a daily wage Peon-cum-Farash for four spells during August, September, October and November, 1996. Therefore, his appointment cannot be taken as a regular appointment and he cannot be directed to be absorbed in the bank service.

The other objection of the learned Counsel appearing for the State Bank of India/respondents is that since the question involves a factual aspect as to whether the writ petitioner has worked for specified number of days and whether his initial appointment was made by following due process are the questions of fact which cannot be

adjudicated in writ proceedings. The writ petitioner if he has any grievance has to approach the Industrial Tribunal for ventilating his grievances and in support of this contention, learned Counsel has relied upon a Division Bench Judgment of our High Court reported in ***State Bank of India and others v. M.Rajaiah and others***^[6]. So far as the facts are concerned, they are similar and the writ petitioners in that case was similarly placed as that of the present writ petitioner. In the case before the Division Bench, large number of subordinate staff which constitute temporary employees/daily wage casual workers/empanelled workers as messengers, sweepers, water boys, watchman etc., were working in the State Bank of India. As per the settlement between the management and the workers' union, such employees sought for absorption in the regular vacancies. The relevant observations of the Division Bench of our High Court were contained in paras 28, 29 and 32, which read as under:-

“The issue involves in this case pertains to the power of this Court to interfere and find out whether the bank has implemented the settlements entered into with the Federation and has absorbed all the temporary employees/daily wage casual workers/empanelled workers/subordinate staff.

It is contended by Mr.Salve that the Court, would not embark upon an enquiry with regard to the implementation or otherwise of the settlements, which depends upon the facts to be adduced on the basis of oral and documentary evidence placed before it and not on the basis of affidavits in writ proceedings. When there is an effective alternative remedy under the provisions of the ID Act, and the dispute between the parties is within the ambit and scope of the Act and provisions which are intended for investigation and settlements of industrial disputes between the parties, the writ proceedings are of the maintainable.

It has been contended that the writ Court ought not to embark upon an enquiry into the factual matrix of the situation. The authority of the law Court which is vested in the power of judicial review, in such matters

entertaining writ petition is very restricted and limited and the law Court ought not to usurp the function of the statutory functionaries under the Industrial Disputes Act.”

Following the above authoritative pronouncement of the Division Bench of this Court, it is held that the writ petitioner cannot invoke the writ jurisdiction of the Court for seeking the direction of his absorption as a permanent employee of the bank. It is, however, open to him to avail the remedies available to him under the provisions of the Industrial Disputes Act.

In view of the foregoing discussion, it is held that the writ petition is not maintainable and the writ petitioner is not entitled to the relief as prayed for and the same is liable to be dismissed.

In the result, the Writ Petition is dismissed. No order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

M.S.K.JAISWAL, J

31st December, 2015
Dsr/smr

[\[1\]](#) (2010) 9 SCC 247

[\[2\]](#) (2011) 4 SCC 200

[\[3\]](#) (2008) 10 SCC 1

[\[4\]](#) (2014) 5 SCC 300

[\[5\]](#) (2015) 6 SCC 494

[\[6\]](#) 1998(4) ALD 211 (DB)